TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

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OPINION	:	No. 80-713
of	:	October 30, 1980
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SUBJECT: CLOSED MEETINGS—It is a violation of the Ralph M. Brown Act for members of a community redevelopment agency or their staff to hold a series of closed meetings with the city council or the city planning commission to convey information regarding the agency's business on or about the same date despite the fact that a quorum of any governmental body is not present at any given meeting.

The Honorable Patrick J. Nolan, Assemblyman, Forty-First District has requested an opinion on a question which he have phrased as follows:

Is it a violation of the Ralph M. Brown Act for members of a community redevelopment agency or their staff to hold a series of closed meetings with the city council or the city planning commission to convey information regarding the agency's business where the meetings are held on the same or approximately the same date and are so planned to insure that a quorum of any governmental body will not be present at any given meeting?

CONCLUSION

It is a violation of the Ralph M. Brown Act for members of a community redevelopment agency or their staff to hold a series of closed meetings with the city council or the city planning commission to convey information regarding the agency's business on or about the same date despite the fact that a quorum of any governmental body is not present at any given meeting.

ANALYSIS

The Ralph M. Brown Act, Government Code section 54950 *et seq.*,[1] requires that "legislative bodies" of "local agencies" as defined therein hold their meetings open to the public, and conduct their deliberations and actions in public, unless expressly exempted by a provision in the act such as is found in the "personnel exception," or unless exempted by some other independent confidentiality provisions such as the attorney-client privilege. (See generally §§ 54950–54951.7, 54952.5, 54953, 54957, 54957.6; *Sacramento Newspaper Guild v. Sacramento County Bd. Of Suprs*. (1968) 263 Cal. App. 2d 41; 62 Ops. Cal. Atty. Gen. 150, 152–164 (1979).)

The Ralph M. Brown Act further contemplates that legislative bodies of local agencies shall conduct their business at either "regular meetings" or "special meetings." The act requires that regular meetings be held at the time provided for by ordinance, resolution or other appropriate rule of the legislative body. As to special meetings, the act provides that they may be called by the presiding officer of the legislative body, or by a majority of the members, at any time. Notice of such special meetings is to be delivered 24 hours in advance to all members of the legislative body and to all segments of the media which have requested such notice. The call and notice shall specify the time and place of the meeting, the business to be transacted, and no business other than that designated may be considered. (See §§ 54954, 54956.)[2]

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[1] All section references are to the Government Code unless otherwise indicated.

[2] The foregoing statements of the provisions of the act set forth the "general rules." The act may contain some minor exceptions or variations. For example, section 54952.3 defines "legislative body" to include certain advisory bodies which are specifically exempted from the provisions requiring the designation of the time and place for meetings, and other notice requirements. If an exception to the general rules set forth is material, it will be discussed.

Furthermore, we note that Senate Bill 1850, 1980 Regular Session (Stats. 1980, ch. 1284) contains numerous amendments to the Ralph M. Brown Act. We will not attempt to incorporate these amendments which will be effective January 1, 1981 into the discussion herein. We point out, however, that nothing in that legislation affects the conclusions reached herein.

The request for our opinion involves the manner in which a particular community redevelopment agency or its staff hold meetings with the city council and other city agencies such as the city planning commission.[3] The meetings are held on or about the same date, but are broken up into groups so that at no time is a quorum of any governmental body present at any given meeting. However, all members of the city council or planning commission will meet with the redevelopment agency or its staff with respect to the same subject matter. No notice of these meetings is given by the city agencies, nor is the public invited.

The general purpose of these meetings (hereinafter "seriatim meetings") is to provide information or "brief" the city agencies with regard to plans, programs or proposals of the redevelopment agency. This is done for a number of reasons including obtaining the reaction of the city officers to such matters in order that the redevelopment agency may be better prepared when its plans, programs or proposals reach the time for public deliberation and action. Accordingly, at these "seriatim meetings" the city council members and city planning commissioners will ask questions and comment upon matters.

The net effect of these meetings will vary. In some cases the matter may be approved without substantive comment when it reaches the city's agenda and is discussed in public 'session. In other cases the deliberations before the city council may be limited by virtue of the fact that the city council and its advisory body, the planning commission, have already had the opportunity to ask questions at the previous "seriatim meetings." Conversely, the discussions may be expanded by virtue of such prior meetings and the prior knowledge the council members bring to the public discussions. Finally, the effect of these' meetings may be to delay any *public* discussion of redevelopment plans and proposals, and in some Instances the redevelopment agency will even abandon particular matters where adverse comment has been made by city officials at the "seriatim meetings."

The question presented is whether the above described "seriatim meetings" between the community redevelopment agency or its staff and all members of the city council or the city planning commission violate the provisions of the Ralph M. Brown Act.

As noted at the outset, the Ralph M. Brown Act generally requires that meetings of legislative bodies of local agencies be open to the public, and that their deliberations and actions be conducted openly. As specifically stated in section 54950, the declaration of policy in the act, ". . . [i]t is the intent of the law that their actions be taken openly and that

[3] There is no question that the city council planning commission and the redevelopment agency board "legislative bodies" of "local agencies" and are thus subject to the provisions of the Ralph M. Brown Act. (See §§ 54951, 54952, 54952.5: *cf. Torres v. Board of Commissioners* (1979) 89 Cal. App. 3d 545 (housing authority).)

their deliberations be conducted openly . . . ."

Accordingly, section 54953 provides:

> "All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter."

No claim is made that the "seriatim meetings" fall within any specific exception to the open meeting requirements of the act. Accordingly, if the "seriatim meetings" are *meetings* within the contemplation of the act, section 54953 would be violated. Additionally, the call and notice requirements for holding "special meetings" would also be violated.[4] Apparently, these "seriatim meetings" have been designed to fall within the "less than a quorum exception" to the Ralph M. Brown Act. That exception, recognized by this office since our opinion in 32 Ops. Cal. Atty. Gen. 240 (1958), and ultimately upheld by the appellate courts of this state in *Henderson v. Board of Education* (1978) 78 Cal. App. 3d 875, generally provides that the Ralph M. Brown Act does not apply to meetings of committees of less than a quorum of the legislative body. This is so because the findings of the committee have not yet been deliberated upon by a quorum of the body. Accordingly, the opportunity for a full public hearing and consideration by a quorum still remains, and hence the public's right to an open meeting is still protected. (See also § 54952.3 codifying the exception as to advisory bodies formed by formal action consisting of solely less than a quorum of the governing body of a local agency.)

The Ralph M. Brown Act does not define the term "meeting" for purposes of the act. In fact, the interim committee which recommended the enactment of a similar act applicable to *state* agencies (see § 11120 *et seq*.) stated with regard to the Ralph M. Brown Act:

> "The committee concludes that it is highly unlikely that 'meeting' can be defined precisely enough to include all occasions where members of a legislative body, whether meeting formally or informally, are discussing public business which will result in official action, and at the same time not apply to casual gatherings involving members of the legislative body." ("The

[4] We note parenthetically that the matters of the legislative body themselves may waive the notice requirement as to themselves either by filing a written waiver of notice or by actually attending the meeting. (See § 54956.) They may not, however, waive the notice to be supplied to the media, nor may they waive the requirement that the call and such notice provide the matter to be discussed at such special meetings.

Right to Know," 12 Assem. Interim Com. Rep. on Governmental Organization (1965) No. 10, p. 26.)

Despite the fact that there is no legislative definition of "meeting" in either the Ralph M. Brown Act or the similar act applicable to state agencies, certain principles may be distilled from case law and the opinions of this office as to what is a "meeting" and the rights of the public with respect thereto. In an unpublished opinion of this office issued in 1975 (I.L. 75–255) we had the occasion to review the case law and twenty years of our opinions from which we drew the following general principles:

> "1. Except for statutory or other legally recognized executive sessions, the public has a right to be present at all meetings of state and local boards and commissions.
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> "2. *Meeting includes all gatherings consisting of a quorum or more where the public's business is to be discussed.* Thus, no action need be taken to have a 'meeting' either in the sense of final action or the broader concept of 'action taken' as defined in the statute. The public has a right to be present where only deliberations occur regarding the public's business.
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> "3. The law, however, does not preclude attendance by a quorum or more at social events where no public business is discussed.
>
> "4. Attendance at professional conferences by a quorum or more of a board or commission are permissible. However, care must be taken to avoid discussing matters which are before the board, or may potentially come before the board." (*Id.*, at p. 9, emphasis added.)

Our review of the opinions of this office for a period of twenty years was as follows:

> "The Ralph M. Brown Act was enacted in 1953. As early as 1956, this office held that the provisions of the Act were not restricted to a city council meeting at which an actual vote on matters was taken. Thus in 27 Ops. Cal. Atty. Gen. 123 (1956), we held the Act to be applicable to 'council conferences.' We noted inter alia, that the Assembly Judiciary Committee Report from which the Brown Act ensued, stated *that '. . . "the public has the right to be present and to be heard during all phases of legislative enactment. . . ."' Id.* at 128.
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> "In 1958 we considered the question of the applicability of the Brown Act to committees of a local agency. With regard to committees of a quorum

or more of a local agency, we stated in 32 Ops. Cal. Atty. Gen. 240, 243 (1958).

'Not only is there a possibility that a "committee" meeting composed of more than a quorum of the creating agency is only a subterfuge designed to evade the requirements of the law, but even where the local agency has created such a committee in utmost good faith the extent to which full public deliberation before action will be offered by the agency will probably be greatly lessened in view of the fact that a quorum of the agency will already have deliberated upon the matter.'

"Thereafter in 1963 this office ruled in 42 Ops. Cal. Atty. Gen. 61 (1963), that pre-meeting briefing sessions held by a city council with the city manager, assistant city manager, city attorney and planning director were subject to the open meeting requirements of the Brown Act, unless the subject matter fell within a proper executive session exception. In so holding, we stated significantly for our purposes herein, at page 68:

"The right of the people to have notice of and to attend all meetings of a local agency and thus keep informed as to the conduct of the members of the legislative body of a local agency is not dependent upon the fact that the members of that body do or do not intend to take "action" as that word is defined in section 54952.6."

Emphasis was also placed upon the fact that section 54950 stated that the intent of the Act was that deliberations as well as actions be taken openly. *Id.* at 63.

"The following year, 1964, this office held in 43 Ops. Cal. Atty. Gen. 36 (1964) that regularly scheduled luncheon meetings held by the members of two cities jointly with certain civic organizations to discuss items of area importance such as airports, school locations, water, sewage and beach erosion, fell within the ambit of the open meeting requirements of the Brown Act even though no decisions were to be made. We reasoned *inter alia* that:

'[b]ecause of the admitted importance to the people in the area of the matters discussed at such meetings by a *majority of the members of the legislative body* (when meeting at a regularly established time and place), we believe that the provisions of the Ralph M. Brown Act apply to such meetings and that the public is entitled to notice of and the right to attend such meetings.' *Id.* at 37–38.

"We, however, cautioned that this holding was not to prevent a quorum of the city council from attending bona fide social gatherings.

'This opinion should not be construed as holding that the mere social attendance by *a majority of the members of a city council or other local agency governing body* at a luncheon or dinner, such as are frequently given by the Rotary, Kiwanis, Lions, Optimists, Elks, Moose, or other fraternal organizations, would constitute a meeting of such city council subject to the Ralph M. Brown Act.' *Id.* at 38.

See also I.L. 71–122, wherein in 1971 we stated in a letter opinion:

'. . . There is no illegality under the Ralph M. Brown Act . . . if *the majority of the members of the governing body* of a county attend a luncheon or social gathering and no county business or matters of importance to county government are discussed. There is no illegality if business is discussed and the meeting is open to the public. . . .' *Id*., at 38.

"Finally, with regard to opinions of this office on the concept of the scope of a 'meeting' within the prohibition of the secret meeting laws, we ruled this year upon the question of the attendance of a quorum of a state agency attending a conference. After balancing the public's right to know "'. . . against public officials' need to act in an administratively feasible manner . . .," we concluded that:

'. . . attendance at the national convention would seem to favor the need for the State Lands Commissioners to become informed about the activities of Lands Commissions nationally. Thus, mere attendance at the national convention would not appear to violate the Open Meeting Act *if care as taken to avoid the discussion of specific matters actually or potentially under consideration by the State Lands Commission.*' (Emphasis has been added.)

See Letter Opinion, I.L. 75–97, at page 4." (*Id.*, at pp. 4–7, all but first and final emphasis have been added.)

With respect to case law, the law on what is a "meeting" is essentially the same today as it was in 1975 when we issued I.L. 75–255, *supra*, with the one additional case, already alluded to, which affirmed this office's opinions with respect to the "less than a quorum exception" (see *Henderson v. Board of Education*, *supra*, 78 Cal. App. 3d 875 affirming those opinions). The main case, other than the *Henderson* case, is *Sacramento Newspaper Guild v. Sacramento County Board of Supervisors, supra*, 263 Cal. App. 2d 41,

which contains the ultimate discussion as to the fact that the Ralph M. Brown Act encompasses all meetings of a quorum of the legislative body, no matter how informal, when the public's business is discussed. The court succinctly and cogently explained:

> ". . . Attempts to define 'meeting' by synonyms or by coupling it with modifying adjectives involve a degree of question-begging. Interpretation requires inquiry into the Brown Act's objective and into the functional character of the gatherings or sessions to which the legislature intended it to apply.
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> "There is nothing in the Brown Act to demarcate a narrower application than the range of governmental functions performed by the agency. Although the Brown Act artificially classifies it as a legislative body, a board of supervisors actually perform legislative, executive and even quasi-judicial functions. (*Chinn v. Superior Court* (1909) 156 Cal. 478, 481 [105 P. 980]; *Frazer v. Alexander* (1888) 75 Cal. 147, 152 [16 P. 757].) Section 54950 is a deliberate and palpable expression of the act's intended impact. *It declares the law's intent that deliberation as well as action occur openly and publicly. Recognition of deliberation and action as dual components of the collective decision-snaking process brings awareness that the meeting concept cannot be split off and confined to one component only, but rather comprehends both and either.*
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> "To 'deliberate' is to examine, weigh and reflect upon the reasons for or against the choice. (See Webster's new International Dictionary (3d ed.).) Public choices are shaped by reasons of fact, reasons of policy or both. Any of the agency's functions may include or depend upon the ascertainment of facts. (*Walker v. County of Los Angeles* (1961) 55 Cal. 2d 626, 635 [12 Cal. Rptr. 671, 361 P. 2d 247].) *Deliberation thus connotes not only collective discussion, but the collective acquisition and exchange of facts preliminary to the ultimate decision."* (*Id.* at pp. 47–48, emphasis added; footnotes omitted.)

And, as further reasoned by the court with respect to the Ralph M. Brown Act:

> "In this area of regulation, as well as others, s statute may push beyond debatable limits in order to block evasive techniques. *An informal conference or caucus permits crystallization of secret decisions to a point just short of ceremonial acceptance*. There is rarely any purpose to a nonpublic pre-meeting conference except to conduct some part of the decisional process behind closed doors. *Only by embracing the collective*

> *inquiry and discussion stages, as well as the ultimate step of official action, can an open meeting regulation frustrate these evasive devices.* As operative criteria, formality and informality are alien to the law's design, exposing it to the very evasions it was designed to prevent. Construed in the light of the Brown Act's objectives, the term meeting' extends to informal sessions or conferences of the board members designed for the discussion of public business. . . ." (*Id.* at pp. 50–51; emphasis added; footnotes omitted.)

'The "seriatim meetings" held between the community redevelopment agency or its staff and the city council or city planning commission clearly fall within the purview of the purposes of the Ralph M. Brown Act, as indicated by the earlier opinions of this office, and as amplified by the court in the *Sacramento Newspaper Guild* case. A number of the members sufficient to constitute a *quorum* of the council and a *quorum* of the planning commission (and also perhaps a *quorum* of the redevelopment agency itself) are in the words of the court engaging in the "collective discussion" and "collective acquisition and exchange of facts preliminary to the ultimate decision" albeit they do so in a series of meetings and not in a single meeting. The right of the public is clearly thwarted by having these meetings held in closed session. This is demonstrated by the fact that in some instances the particular matter is abandoned by the redevelopment agency itself, thus demonstrating that even "action" may be taken with no public knowledge or discussion. This is further demonstrated by the fact that in some instances the matters discussed at the "seriatim meetings" are approved at the city level with little or no public discussion. The danger pointed out by the court above is brought to fruition, since the informal meetings will have in some instances permitted the "crystallization of secret decisions to a point just short of ceremonial acceptance." Finally, this is also demonstrated by the fact that in certain instances matters discussed will be delayed for long periods of time between the "seriatim meetings" and their appearance on the city council's agenda, thus perhaps delaying public knowledge on matters in which the public is interested and as to which the public has a right to be informed. Thus, the public's right to be informed *at all stages of the legislative or administrative processes* of its governing bodies is nullified.

Nor do these "seriatim meetings" meet the criteria so as to qualify under the "less than a quorum exception" to the Ralph M. Brown Act. That exception contemplates that less than a quorum of a governmental body will be appointed as a committee to report back to the full legislative body at which time *full public deliberation will take place*. This is not the case with the "seriatim meetings." No committee or committees have been appointed to report back to their respective parent bodies. More importantly, 'a number of the members sufficient to constitute *a quorum of the legislative body*, albeit in a series of meetings, has already had the opportunity to be informed and deliberate on the particular public business. Thus, when the matter reaches the stage for public discussion of in fact it ever does) there may actually be no deliberation at all, or the deliberation may be

perfunctory because of the knowledge already obtained in the "seriatim meetings." Thus, the rationale for "the less than a quorum exception" is totally lacking.[5]

Accordingly, it is our conclusion that these "seriatim meetings" constitute a violation of the open meeting requirements of the Ralph M. Brown Act and also the notice requirements of that act despite the fact that there is no quorum of any legislative body present at any given meeting. The fact remains that a quorum of such legislative bodies has met and has discussed the public's business in private. As pointed out by the court in the *Sacramento Newspaper Guild* case, *supra*, "[c]onstrued in the light of the Brown Act's objective, the term "meeting' extends to informal sessions or conferences of the board members designed for the discussion of public business." (263 Cal. App. 2d at p. 51.) The "seriatim meetings" meet such criteria. To conclude otherwise would permit a legislative body to completely thwart both the letter and spirit of the Ralph M. Brown Act.

This conclusion is in accord with and supported by a prior unpublished opinion of this office rendered in 1967 on a similar factual situation. (Attorney General's Unpublished Opinion, I.L. 67–147.) In that opinion a city council in setting the salaries of certain high ranking city officials did so in a series of non-public meetings.[6] Two council members (less than a quorum) met and discussed the salaries. Subsequently, one of these two councilmen met individually with the remaining three councilmen and informed them of the results of the two-member meeting. At no time did a quorum of the city council discuss the pay raises at the same meeting. However, as a result of these informal meetings, or "seriatim meetings," a new salary schedule was delivered to the city manager and placed into a city ordinance. In analyzing that factual situation, we pointed out inter alia as we have herein that the questioned meetings in no way met the criteria established for the "less than a quorum exception" to the Ralph M. Brown Act. We accordingly concluded the act was violated despite the fact that a quorum of the council had never actually met at the same time.

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[5] Compare Attorney General Unpublished Opinion I.L. 76–174, concluding that meetings between committees of less than a quorum of boards of supervisors of adjoining counties to discuss mutual Water problems fell within the "less than a quorum exception."

[6] Had the city council done so in an "executive session" held during a regular or special meeting, its action would have been proper under the "personnel exception" of section 54957. (See 61 Ops. Cal. Atty. Gen. 283, 286-287 (1978).)